

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs September 19, 2001

**STATE OF TENNESSEE v. REYNALDO T. COLLAZO**

**Extraordinary Appeal from the Criminal Court for Rutherford County**  
**No. M-49356 J. Steve Daniel, Judge**

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**No. M2000-03084-CCA-R3-CD - Filed March 18, 2002**

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The defendant, Reynaldo T. Collazo, entered a plea of nolo contendere to one count of failure to obey a police officer, a class C misdemeanor. The trial court placed the defendant on judicial diversion. See Tenn. Code Ann. § 40-35-313(a)(1)(A). In this appeal, the defendant presents a certified question of law pursuant to Tennessee Rule of Criminal Procedure 37(b)(2)(i). Because the defendant was placed on judicial diversion, he has no appeal as of right under Tennessee Rule of Appellate Procedure 3. This court elects to treat the improperly filed Rule 3 appeal as an extraordinary appeal pursuant to Tennessee Rule of Appellate Procedure 10. The judgment of the trial court denying the defendant's motion to suppress is affirmed. Because, however, the trial court failed to make a finding of guilt before placing the defendant on judicial diversion, the cause is remanded.

**Tenn. R. App. P. 10; Judgment of the Trial Court Affirmed; Cause Remanded**

GARY R. WADE, P.J., delivered the opinion of the court, in which DAVID G. HAYES and JERRY L. SMITH, JJ., joined.

John E. Herbison, Nashville, Tennessee, for the appellant, Reynaldo T. Collazo.

Paul G. Summers, Attorney General & Reporter; David H. Findley, Assistant Attorney General; T. Michael Bottoms, District Attorney General, for the appellee, the State of Tennessee.

**OPINION**

On March 1, 2000, Officer Wade Hatfield of the LaVergne Police Department assisted Officer David Konen in a traffic stop on the southbound side of Parthenon Road. While the officers questioned the driver of the stopped car, they heard horns blowing in the northbound lane. Officer Hatfield observed a green van pulled onto the shoulder in the northbound lane, partially obstructing the roadway.

When Officer Hatfield turned his patrol car around in an effort to determine why the van had stopped, the van was driven away at a high rate of speed. Officer Hatfield followed and was able to make a stop in the parking lot of Parthenon Metals. When the defendant, who was driving the van, was asked why he had parked on the shoulder of the road, he responded by invoking his Fifth Amendment right to remain silent. Officer Hatfield returned to his patrol car to write a citation for obstructing a highway.

While Officer Hatfield was writing the citation, Officer Konen arrived to assist. Officer Konen, who was not present when the defendant had invoked his right to remain silent, also asked the defendant why he had parked on the shoulder of the road. The defendant became upset and refused to answer. As Officer Konen was walking back to his patrol car, the defendant shouted that he did not want to answer any questions. Officer Konen then turned and as he began walking back toward the van the defendant stepped out of the van, raised his arm, and yelled, "Go ahead and shoot me. I've got a right to be out here . . . ." When the defendant stood up, Officer Hatfield observed a handgun tucked in the defendant's pants under his shirt.

At that point, Officer Konen instructed the defendant to step back into his vehicle. The defendant started to get back into the van, but instead turned and shouted to Officer Konen, "I would rather be a smart ass than a dumb ass." Officer Hatfield then ordered the defendant to step back into his vehicle. When the defendant failed to do so, Officer Hatfield placed him under arrest, charging the defendant with obstructing a highway and failure to obey a police officer. The defendant filed a motion to suppress, arguing that his arrest was illegal because Officer Hatfield lacked probable cause to make the traffic stop. The trial court overruled the motion, holding that "the officer [was] in a lawful position to inquire, to make the inquiry, having the probable cause to make the citation . . . ."

In a bench trial in General Sessions Court, the defendant was found not guilty of obstructing a highway and guilty of failure to obey a police officer. The General Sessions Court imposed a sentence of thirty days' unsupervised probation. The defendant appealed the ruling to the Rutherford County Circuit Court, see Tenn. Code Ann. § 27-5-108, where he later entered a plea of nolo contendere to the charge of failure to obey a police officer. Pursuant to a plea agreement with the state, the defendant certified the following question of law: "Whether the prohibitions of Tennessee Code Annotated § 55-8-104 are applicable to the parking area of a private business, which premises are adjacent to, but distinct and removed from, a public roadway, where the chain of events culminating in the charged offense originated on a public roadway."

After his plea, the trial court placed the defendant on judicial diversion pursuant to Tennessee Code Annotated section 40-35-313. The judicial diversion statute provides that after an adjudication of guilt, a trial court may defer entry of judgment until a defendant successfully completes a diversion program or violates a condition of his release. See Tenn. Code Ann. § 40-35-313(a)(1)(A). If a defendant is successful, the statute provides for expungement from "all official records . . . all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section." Tenn. Code Ann. § 40-35-313(b). The effect of

dismissal under the diversion statute "is to restore the person, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information." Id.

As part of his plea agreement, the defendant certified a question of law under Tennessee Rule of Criminal Procedure 37. That rule provides in pertinent part as follows:

An appeal lies from any order or judgment in a criminal proceeding where the law provides for such appeal, and from any judgment of conviction:

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(2) upon a plea of guilty or nolo contendere if:

(i) defendant entered into a plea agreement under Rule 11(e) but explicitly reserved with the consent of the State and of the court the right to appeal a certified question of law that is dispositive of the case[.]

Tenn. R. Crim. P. 37(b)(2)(i). Before a defendant may claim the benefits of a certified question under Rule 37, he must show that the order or judgment from which appeal is sought is appealable "as a matter of right." See Tenn. R. Crim. App. 37(a).

Tennessee Rule of Appellate Procedure 3 establishes which cases may be appealed as a matter of right. That rule provides that appeal as a matter of right lies "from any judgment of conviction entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: . . . (2) on a plea of guilty or nolo contendere, if the defendant entered into a plea agreement but explicitly reserved . . . the right to appeal a certified question of law dispositive of the action." Tenn. R. App. P. 3(b). In addition, Rule 3(b) provides that a "defendant may also appeal as of right from an order denying or revoking probation, and from a judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding." Thus, appeal as of right is available only when there has been a judgment of conviction, where the trial court has denied or revoked probation, or in certain other circumstances not applicable here. Id.

Here, there is no judgment of conviction. See Tenn. Code Ann. § 40-35-313. In State v. Robert A. Norris and Lida Meador, a panel of this court held that a defendant who has been granted judicial diversion may not appeal as of right a certified question of law under Tennessee Rule of Criminal Procedure 37. No. E1999-00485-CCA-R3-CD, slip op. at 3, 4 (Tenn. Crim. App., at Knoxville, May 31, 2000). The majority concluded that an appeal as of right did not lie for defendant Meador because she had been placed on judicial diversion. The panel determined that there was no judgment of conviction from which she could appeal a certified question of law. Id., slip op. at 4; see also Tenn. Code Ann. § 40-35-313(a)(1)(A); Tenn. R. Crim. P. 37(b); Tenn. R. App. P. 3(b). Further, the panel determined that Meador could not appeal as of right because she was granted, rather than denied, probation and because she was not appealing the diversion decision. Norris, slip op. at 4; see also Tenn. R. App. P. 3(b).

While the defendant entered a plea of nolo contendere, rather than a plea of guilty, the analysis of Norris is applicable here. In our view, the defendant has no basis for appealing a certified question of law under Tennessee Rule of Criminal Procedure 37 because he has no appeal as a matter of right under Tennessee Rule of Appellate Procedure 3(b).

This court may, however, treat an appeal filed improperly under Rule 3 as an application for extraordinary appeal pursuant to Rule 10 of the Tennessee Rules of Appellate Procedure. See State v. Leath, 977 S.W.2d 132, 135 (Tenn. Crim. App. 1998); Norris, slip op. at 4; State v. Barbara Copeland, No. 03C01-9402-CR-00079 (Tenn. Crim. App., at Knoxville, June 28, 1996). Rule 10 provides that an extraordinary appeal may be sought “if the lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review.” Tenn. R. App. P. 10(a). In State v. Willoughby, our supreme court held that an extraordinary appeal should only be granted when it is established that: (a) the ruling of the court below represents a fundamental illegality, (b) the ruling constitutes a failure to proceed according to the essential requirements of the law, (c) the ruling is tantamount to the denial of either party of a day in court, (d) the action of the trial judge was without legal authority, (e) the action of the trial judge constituted a plain and palpable abuse of discretion, or (f) either party has lost a right or interest that may never be recaptured. 594 S.W.2d 388, 392 (Tenn. 1980). Because the trial court failed to make a finding of guilt before placing him on judicial diversion, the defendant meets the requirements for the granting of a Rule 10 extraordinary appeal.

Tennessee Code Annotated section 40-35-313 provides that a defendant may be granted judicial diversion only after an adjudication of guilt. Tenn. Code Ann. § 40-35-313(a)(1)(A). Here, the trial court accepted the defendant’s nolo contendere plea, but “pass[ed] no judgment” on the defendant’s guilt or innocence. Absent a determination of guilt, a condition within the statutory terms, the trial court was without authority to place the defendant on judicial diversion. The cause must be remanded to allow the trial court to make the appropriate finding in regard to the defendant’s guilt.

The certified question focuses on the application of Tennessee Code Annotated section 55-8-104. That statute provides as follows:

- (a) No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control, or regulate traffic.
- (b) A violation of this section is a Class C misdemeanor.

Tenn. Code Ann. § 55-8-104.

The defendant contends that this statute does not apply to those orders or directions given by a police officer who makes a traffic stop on private property. In support of his argument, the defendant points to Tennessee Code Annotated section 55-8-102, which provides that “[t]he provisions of this chapter and chapter 10, parts 1-5 of this title, relating to the operation of vehicles,

refer exclusively to the operation of vehicles upon highways, except where a different place is specifically referred to in a given section.” Tenn. Code Ann. § 55-8-102(a). The state argues that the limitation of section 55-8-102 applies only to those statutes “relating to the operation of vehicles” and that section 55-8-104 regulates the conduct of persons, not the operation of vehicles.

In matters of statutory construction, the role of this court is to ascertain and give effect to the intent of the legislature. State v. Williams, 623 S.W.2d 121, 124 (Tenn. Crim. App. 1981). Unless ambiguity requires resort elsewhere to ascertain legislative intent, judicial interpretation of a statute is restricted to the natural and ordinary meaning of the language used. Roddy Mfg. Co. v. Olsen, 661 S.W.2d 868, 871 (Tenn. 1983). “Legislative enactments must be interpreted in their natural and ordinary sense without a forced construction to either limit or expand their meaning.” State v. Thomas, 635 S.W.2d 114, 116 (Tenn. 1982). “Courts must construe statutes as a whole and in conjunction with their surrounding parts and their interpretation should be consistent with their legislative purposes.” State v. Turner, 913 S.W.2d 158, 160 (Tenn. 1995). The meaning of a statute is to be determined not from specific words in a single sentence or section but from the act in its entirety in light of the general purpose of the legislation; any interpretation should express the intent and purpose of the legislation. National Gas Distrib., Inc. v. State, 804 S.W.2d 66, 67 (Tenn. 1991); Loftin v. Langsdon, 813 S.W.2d 475, 478-79 (Tenn. Ct. App. 1991). “The cardinal rule of statutory construction is to effectuate legislative intent, with all rules of construction being aides to that end.” Browder v. Morris, 975 S.W.2d 308, 311 (Tenn. 1998).

The defendant concedes that Officer Hatfield was “invested by law with authority to direct, control, or regulate traffic.” See Tenn. Code Ann. § 55-8-104(a). He also concedes that Officer Hatfield initiated the traffic stop on a public highway. He argues, however, that the authority of law enforcement officers to issue lawful orders is restricted to the highways of the state. Thus, he contends, once he drove into the parking lot at Parthenon Metals, Officer Hatfield’s authority to issue lawful directives ended. In our view, the legislature did not intend to divest an officer of the authority to direct a suspect who has moved his vehicle from a public road onto private property. Statutes must not be construed in a manner which may lead to absurd results. State v. Paul Horton, 880 S.W.2d 732 (Tenn. Crim. App. 1994). If the appeal had been properly filed, the defendant would not have prevailed on the certified question.

As indicated, the cause must be remanded for an adjudication of guilt. Costs are adjudged to the defendant.

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GARY R. WADE, PRESIDING JUDGE